

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JANE DOE,

Plaintiff,

v.

THE CITY OF SAN DIEGO, et al.,

Defendants.

Civil No. 12-cv-0689-MMA (DHB)

**ORDER RESOLVING JOINT  
MOTION FOR DETERMINATION  
OF DISCOVERY DISPUTE RE  
PLAINTIFF JANE DOE'S  
AMENDED NOTICE OF  
VIDEOTAPED DEPOSITION OF  
DEFENDANT ANTHONY  
AREVALOS**

**[ECF No. 90]**

On April 12, 2013, the parties filed a Joint Motion for Determination of Discovery Dispute ("Joint Motion") regarding Plaintiff Jane Doe's amended notice of videotaped deposition of Defendant Anthony Arevalos. (ECF No. 90.) After a thorough review of the parties' argument and evidence, the Court issues the following Order to resolve the issues in dispute.

Plaintiff's allegations in this case are well-known to the Court and the parties. Therefore, they will not be summarized at length in this Order. Suffice it to say that Plaintiff seeks to recover compensatory and punitive damages from the City of San Diego, its police department and several current and former police officers based on a March 8, 2011 sexual

1 assault committed by one of the former officers, Defendant Anthony Arevalos. In November  
2 2011, Defendant Arevalos was convicted of multiple felony and misdemeanor counts arising  
3 out of on-duty sexual assaults of various female victims, including Plaintiff. Defendant  
4 Arevalos was sentenced to more than eight years in state prison, and he is currently  
5 incarcerated at the California Substance Abuse Treatment Facility and State Prison in  
6 Corcoran, California. Defendant Arevalos has appealed his criminal convictions and the  
7 appeal remains pending before the California Court of Appeal.

8 The issues presently before the Court concern Plaintiff's amended notice of  
9 videotaped deposition of Defendant Arevalos' deposition. In Plaintiff's April 3, 2013  
10 amended notice of videotaped deposition of Defendant Arevalos, Plaintiff noticed Defendant  
11 Arevalos' deposition for May 20, 2013 at Corcoran State Prison. Defendant Arevalos  
12 objects to the deposition on several grounds, to which the City Defendants join.

13 **A. Leave of Court Required**

14 First, Defendants contend that the deposition notice is defective because Plaintiff  
15 failed to comply with Federal Rule of Civil Procedure 30(a)(2)(B)'s requirement that a  
16 deposition of a prisoner may only be taken with leave of court, which Plaintiff has not  
17 previously obtained. Rule 30(a)(2)(B) plainly requires leave of court before the deposition  
18 of an incarcerated individual may be taken. However, the rule is silent as to whether leave  
19 of court must be obtained prior to the *notice* of deposition or prior to a party beginning to  
20 coordinate the deposition with the prison's litigation coordinator. The Court need not decide  
21 these issues here. Plaintiff has, via the instant Joint Motion, sought leave of court to take  
22 Defendant Arevalos' deposition. Moreover, the Court finds good cause to permit Plaintiff  
23 to take Defendant Arevalos' deposition.<sup>1</sup> That the deposition was noticed and arrangements  
24 were commenced with the prison's litigation coordinator are insufficient grounds for denying  
25 Plaintiff the opportunity to depose Defendant Arevalos, particularly because now that leave  
26 of court has been obtained Plaintiff could simply re-notice the deposition for May 20, 2013.

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28 <sup>1</sup> "Defendants do not dispute [Plaintiff's] counsel's right to depose the police officer who sexually molested Plaintiff [*i.e.*, Defendant Arevalos]." (ECF No. 90 at 4:11-13.)

1 The Court does not believe such additional steps are necessary.

2 **B. “Confidential” Designation of Deposition Transcript and Video**

3 Second, Defendants contend that the entire transcript and video of Defendant  
4 Arevalos’ deposition should be designated as “confidential” pursuant to the terms of the  
5 Court’s Protective Order in this case. (*See* ECF No. 83.) Defendant Arevalos bases his  
6 request to designate the deposition as “confidential” due to concerns regarding the effect that  
7 public disclosure of his deposition testimony might have on (1) his continued personal safety  
8 while incarcerated and (2) a potential retrial following his appeal of his criminal convictions.

9 Plaintiff rejected Defendant Arevalos’ previous offer to stipulate to an order for the  
10 taking of his deposition if Plaintiff would stipulate to designate the deposition as “confiden-  
11 tial.” Plaintiff argues that Defendant Arevalos has no basis for claiming a “heightened  
12 privacy status” beyond those areas already covered by the Court’s Protective Order.  
13 However, the Protective Order expressly provides for “confidential” designation based upon  
14 a court order. (*Id.* at ¶ 1(b)(vi) (stating that the definition of “confidential” includes, among  
15 other things, “any other information deemed privileged or confidential pursuant to any State  
16 or Federal statute or regulation, *or any court order.*”) (emphasis added).)

17 The Court agrees with Defendants that the entire transcript and video of Defendant  
18 Arevalos’ deposition should be designated as “confidential” under the Protective Order.  
19 Plaintiff has expressed an intent to question Defendant Arevalos about “his access to high-  
20 level leadership on the San Diego Police Department” (ECF No. 90 at 5:15-17) and “his  
21 relationships and communications with upper brass.” (*Id.* at 6:16-17.) The potential that  
22 responses to these lines of questioning may be publically disclosed, coupled with the fact that  
23 Defendant Arevalos is an imprisoned former police officer convicted of sexual assault  
24 crimes, raise concerns about possible retaliation against Defendant Arevalos and his  
25 continued safety while incarcerated.

26 Moreover, given the continued media coverage of this case, public disclosure of  
27 Defendant Arevalos’ deposition testimony would create a substantial risk of tainting the  
28 potential jury pool for both the trial in this civil action as well as any potential retrial of the

1 criminal charges.<sup>2</sup>

2 Finally, the Court agrees with Defendants that designating the entire deposition as  
3 “confidential” will avoid forcing the parties to otherwise engage in what is likely to be a  
4 burdensome and unmanageable effort to designate numerous portions of the deposition as  
5 “confidential.”

6 Plaintiff argues that designation of the deposition as “confidential” would impede or  
7 interfere with her ability to prepare the case for trial. The Court disagrees. As discussed  
8 above, Plaintiff is entitled to take Defendant Arevalos’ deposition. The fact that the  
9 deposition will be protected as “confidential” under the Protective Order does not impose  
10 limits on her ability to question Defendant Arevalos. It merely prevents subsequent public  
11 disclosure of the deposition testimony. While the Court understands the public’s interest in  
12 the outcome of this case, Plaintiff has no need to publically disclose the deposition testimony  
13 in order to prepare for trial. Importantly, the Court’s designation of the deposition as  
14 “confidential” does not prevent Plaintiff from later challenging the designation and seeking  
15 a court order re-designating the deposition transcript, or portions thereof, pursuant to  
16 Paragraph 11 of the Protective Order. In addition, the Court’s designation does not relieve  
17 any party from the requirement that leave of court be given prior to filing any documents  
18 under seal.

19 In conclusion, pursuant to Federal Rule of Civil Procedure 26(c)(1), the Court finds  
20 that the entire transcript and videotape of Defendant Arevalos’ deposition shall be designated  
21 and treated as “confidential” under the terms of the Court’s prior Protective Order.

### 22 **C. Sequence of Discovery**

23 Defendants contend that because Defendant Arevalos’ appeal of his criminal  
24 conviction remains pending, his deposition should be scheduled to occur near the close of

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26 <sup>2</sup> Although both sides assert arguments regarding the scope of Defendant Arevalos’  
27 Fifth Amendment privilege against self incrimination and the manner in which he should  
28 claim that privilege, the Court views the issue of whether to designate the deposition as  
“confidential” as a separate issue. Moreover, it is premature at this stage to decide the  
appropriateness of Fifth Amendment objections that Defendant Arevalos has not yet  
made.

1 discovery after other depositions have occurred because if the parties are able to reach a  
2 settlement following these other depositions, his deposition will not be necessary, thereby  
3 avoiding potential issues due to his pending criminal appeal. Defendant Arevalos claims that  
4 he will otherwise be placed in an “untenable” and “oppressive” position.

5 However, as recognized by District Judge Michael M. Anello when denying  
6 Defendants’ motion to stay, the possibility of a retrial of the criminal charges “appears  
7 remote,” and Defendant Arevalos’ Fifth Amendment rights are only minimally implicated  
8 in this case. (ECF No. 50 at 4:2-14.)

9 Additionally, “[u]nless, on motion, the court orders otherwise for the parties’ and  
10 witnesses’ convenience and in the interests of justice: (A) methods of discovery may be used  
11 in any sequence; and (B) discovery by one party does not require any other party to delay  
12 its discovery.” FED. R. CIV. P. 26(d)(2). The Court does not believe that the potential for  
13 settlement following the completion of other depositions constitutes good cause to postpone  
14 Defendant Arevalos’ deposition beyond the May 20, 2013 date upon which it has been  
15 noticed. The close of discovery, which was already extended once from May 17, 2013 to  
16 August 1, 2013 per the parties’ request (*see* ECF No. 73) is fast approaching. Moreover, the  
17 parties’ expert disclosures are due on June 14, 2013, less than one month after Defendant  
18 Arevalos’ scheduled deposition. (*See id.*) The Court agrees with Plaintiff that she should  
19 be entitled to take Defendant Arevalos’ deposition on the date noticed in the amended notice  
20 of deposition.

21 **D. Court’s Availability on May 20, 2013**

22 Plaintiff has requested that the Court make itself availability on the date of Defendant  
23 Arevalos’ deposition in the event disputes arise during the course of the deposition. At the  
24 present time, the Court has two separate settlement conferences scheduled on May 20, 2013.  
25 However, the parties are encouraged to contact the Court during the deposition if the need  
26 arises, and the Court will attempt to make itself available. The parties shall comply with  
27 Section IV(B) of the undersigned’s Civil Chambers Rules.

28 ///

**CONCLUSION**

Based on the foregoing, IT IS HEREBY ORDERED:

1. Good cause having been shown, the parties may depose Defendant Anthony Arevalos on May 20, 2013, beginning at 8:00 a.m., at the California Substance Abuse Treatment Facility and State Prison, 900 Quebec Avenue, Corcoran, California 93212. The deposition may be videotaped.
2. The entire transcript and videotape of Defendant Arevalos' May 20, 2013 videotaped deposition shall be designated as "confidential" pursuant to the Court's March 8, 2013 Protective Order. (ECF No. 83.)

**IT IS SO ORDERED.**

DATED: April 22, 2013

  
DAVID H. BARTICK  
United States Magistrate Judge